Eugene Iovine, Inc. *and* Local Union No. 3, International Brotherhood of Electrical Workers, AFL–CIO. Cases 29–CA–21052, 29–CA–21086, 29–CA–21840–3, 29–CA–21879–1, 29–CA–21879–2, and 29–CA–22030

May 31, 2006

ORDER REMANDING PROCEEDING

BY CHAIRMAN BATTISTA AND MEMBERS SCHAUMBER AND KIRSANOW

On April 17, 2002, Administrative Law Jude Howard Edelman issued the attached decision.[1] The Respondent filed exceptions and a supporting brief.

By letters dated October 28 and November 10, 2005, the Respondent requested, among other things, that this case be remanded to the chief administrative law judge for a new hearing and decision because the judge had improperly created the appearance of partiality by copying extensive portions of the General Counsel's post-hearing brief into his decision. By letter dated November 23, 2005, the General Counsel filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Consistent with our decision in *Dish Network Service Corp.*, 345 NLRB 1071 (2005), we have decided to remand this case to another judge in order for him or her to review the record an disuse an appropriate decision.

In this case and in many others, the same judge has copied extensively from the General Counsel's brief in his decision. In each case, the judge then decided the case in favor of the General Counsel.[2] In the instant case, all the statement of facts in the judge's decision and the majority of its legal analysis were copied almost verbatim from the General Counsel's brief.

In *Dish Network* we said: "it is essential not only to avoid actual partiality and prejudgment . . . in the conduct of Board proceedings, but also to avoid even the appearance of a partisan tribunal." *Indianapolis Glove Co.,* 88 NLRB 986 (1950). See *Reading Anthracite Co*., 273 NLRB 1502 (1983).

Considering the instant case in the context of all of these cases as a whole, the impression given is that Judge Edelman simply adopted, by rote, the views of the General Counsel and failed to conduct an independent analysis of the case's underlying facts and legal issues.

The Respondent has specifically objected to Judge Edelman's extensive copying. We agree with those objections. It is the Board's solemn obligation to insure that its decisions and those of its judges are free from partiality and the appearance of partiality. The cited decisions of Judge Edelman fail to meet this element test.

We understand that this remand delays the issuance of a Board decision, and this may inconvenience the parties. However, we believe that the fundamental necessity to insure the Board's integrity outweigh these considerations.

In order to dispel this impression of partiality, we will remand the case to the chief administrative law judge for reassignment to a different administrative law judge. This judge shall review the record and issue a reasoned decision.[3] We will not order a hearing de novo because our review of the record satisfies us that Judge Edelman conducted the hearing itself properly.

ORDER

IT IS ORDERED that the administrative law judge's decision of April 17, 2002, is set aside.

IT IS FURTHER ORDERED that this proceeding is remanded to the chief administrative law judge who shall review the record of this matter and prepare and serve on the parties a decision containing findings of fact, conclusions of law, and recommendations based on the partied, the provisions of Section 102.46 of the Board's rules and Regulations shall apply.

Kathy Drew-King, Esq., for the General Counsel.
Steven Goodman, Esq. (Jackson, Lewis, Schnitzler,[1] *& Krupman)*, for the Respondent.
Vincent McElroen, for the Union.

[1] The judge issued an erratum on May 13, 2002.

[2] See *CMC Electrical,* 347 NLRB 273 (2006); *Crossing Rehabilitation,* 347 NLRB 228 (2006); *Regency House of Wallingford*, 347 NLRB 173 (2006); *Simon DeBartelo Group*, 347 NLRB 282 (2006); *Trim Corp*., 347 NLRB No. 24 (2006); *Dish Network*, supra; *Fairfield Tower Condominium Assn.,* 343 NLRB No. 101 (2004).

[3] To the extent that Judge Edelman made demeanor-based credibility determinations, the new judge may rely on them unless they are inconsistent with the weight of the evidence. If inconsistent with the weight of the evidence, the new judge may seek to resolve such conflicts by considering "the weight of the respective evidence, established or admitted facts, inherent probabilities, and reasonable inference which may be drawn from the record as a whole." *RC Aluminum Industries, Inc*., 343 NLRB 939 fn. 2 (2004). *Quoting Daikichi Sushi*, 335 NLRB 622, 623 (2001) (internal quotation marks and citations omitted). Alternatively, the new judge may, in his/her discretion, reconvene the hearing and recall witnesses for further testimony. In doing so, the new judge will have the authority to make his/her own demeanor-based credibility findings.

[1] The complaint originally alleged violations against Gilston Electrical Contracting Corp. and Action Electrical Contracting Corp. At the trial of this case counsel for General Counsel withdrew all of the allegations alleged in the complaint against Gilston and Action.

DECISION

STATEMENT OF THE CASE

HOWARD EDELMAN, Administrative Law Judge. This case was tried before me on February 21, 2002, in Brooklyn, New York.

On October 27, 1998, pursuant to a series of alleged unfair labor practice charges filed by Local Union No. 3, International Brotherhood of Electrical Workers, AFL–CIO (the Union), a consolidated complaint issued against Eugene Iovine, Inc. (the Respondent). The complaint alleged violations of Section 8(a)(1) and (5) of the Act.[1]

Respondent, at the trial admitted all of the factual allegations in the complaint except the legal conclusions that Respondent had to bargain about, the layoffs and that Respondent had not furnished the Union with advanced timely notice of such layoffs.

Based upon the entire record herein, including my observation of the demeanor of the witness called by Respondent, and the briefs submitted by counsel for the General Counsel and counsel for Respondent, I make the following findings of fact and conclusions of law.

STATEMENT OF FACTS

Respondent is a New York corporation with its principal office and place of business located at 280 Route 109, Farmingdale, New York. Respondent is engaged in providing electrical contracting services to other business firms and governmental agencies. Respondent employs employees at various and varying work locations. During the past year, in the course and conduct of its business operations, Respondent performed services valued in excess of $50,000 for various enterprises and governmental entities located in the State of New York, each of which enterprise in turn is directly engaged in interstate commerce and meets a Board standard for the assertion of jurisdiction, exclusive of indirect inflow or indirect outflow. It is admitted that at all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2 (2), (6), and (7) of the Act.

It is also admitted that the Union is an organization within the meaning of Section 2(5) of the Act.

The Respondent is a member of the United Electrical Contractors Association (UECA), which is also known as the United Construction Contractors Association (UCCA). The UECA is an organization composed of employers engaged primarily as electrical contractors in the construction industry which exists, among other reasons, for the purpose of representing its employer-members in negotiating and administering collective-bargaining agreements with various labor organizations. From about 1969 through 1992, Respondent had a collective-bargaining relationship with Local 363, International Brotherhood of Teamsters (Local 363). Local 363 represented a unit of all electricians, electrical maintenance mechanics, helpers, apprentices, and trainees employed in the electrical field by the employer-members of the UECA. This collective-bargaining relationship between the Respondent and Local 363 had been embodied in a long series of collective-bargaining agreements. The collective-bargaining agreement between the UECA and Local 363 did not require employer members to bargain about layoffs. The agreement only required that an employer member notify Local 363 funds that employees had been laid off.

On February 23, 1993, the Union was certified as the exclusive collective-bargaining representative of a unit of all electricians, electrical maintenance mechanics, helpers, apprentices, and trainees employed in the electrical field by the employer-members of the UECA. Thus, the Union has been the exclusive collective-bargaining representative for the above unit of Respondents employees with respect to rates of pay, wages, hours of employment, and other terms and condition of employment of these employees. Since sometime in October 1994, the UECA and the Union have met for the purposes of engaging in contract negotiations with respect to wages, hours, and other terms and conditions of employment of the unit employees. Respondent and the Union were engaged in negotiations with respect to wages, hours, and other terms and conditions of employment of the unit employees when the unfair labor practice alleged here occurred.

On December 6, 1996, Respondent laid off its employee William Alleyne, and on January 3, 1997, the Respondent laid off its employee, Hugh Oakley. Respondent did not notify the Union that it intended to lay off these employees nor did it offer to bargain with the Union over the decision to implement these layoffs. No reason was given to the Union for such layoffs. Respondent did notify Local 363, International Brotherhood of Teamster's funds office that Alleyne and Oakley had been laid off. On December 19, 1997, Respondent laid off employee Lesley Thomas. Again, Respondent did not notify the Union about this layoff, nor did it provide the Union with an opportunity to bargain over this layoff. By letter dated March 30, 1998, the Union requested that the Employer bargain over the layoff of employee Leslie Thomas.[2]

By letter dated January 12, 1998, Respondent through its attorney advised the Union that it had laid off its employees, Anthony Longo and Charlie Sarrullo on January 9, 1998. The Union requested, among other things, to negotiate with Respondent over the recall policy that would be used in the event of a recall, by letter dated January 13, 1998. On January 21, 1998, Respondent responded to the Union's January 13, 1998 letter and advised the Union that it was prepared to negotiate over the effects of the January 9, 1998 layoffs. On January 22, 1998, the Union notified Respondent that it was available to negotiate on certain dates regarding the January 9, 1998 layoffs. This letter stated the reasons for the layoff was "due to lack of time and material work available."

On January 20, 1998, Respondent sent the Union a letter advising that it had laid off employees, John Bentacourt, Peter

[2] Counsel for the General Counsel moved in her brief for the admission of its exhibits 24 and 25 into the record. Counsel for the General Counsel contends she inadvertently omitted these two documents from the exhibits introduced at the trial. Counsel for Respondent does not object to the admission and they are admitted and will be supplied to the Board as part of the records submitted herein.

Capasso, Mike Matone, Wayne Munyon, Phil Spannegel, Gregg Stafford, Lenford Anderson, Salvatore DePetro, and Clifford Pelzer on January 16, 1998. Respondent further advised that it had no obligation to notify the Union concerning the layoffs pursuant to its past practices. The Union requested that Respondent negotiate with it over the recall policy that would be used in the event the Employer had a need to hire, rehire, or expand its workforce in the future.

Respondent through the UCCA, notified the Union on January 23, 1998, that it had laid off employees William Grady, Gary Schultz, and Ed Wellington on January 23, 1998. Again, Respondent, through UCCA reiterated that it had no obligation to notify the Union prior to the layoff pursuant to its past practice. No reason was stated for the layoffs. On January 26, 1998, Respondent through UCCA sent the Union a letter informing it that on January 16, 1998, it had laid off employees Allen Tu, Jośe LaSalle, Edward Shane, Louis Cordero, and Ararson Medrano. No reason was stated for the layoffs.

By letter dated February 25, 1998, from the UCCA, Respondent advised the Union, that it had laid off employee Phil Nola on February 20, 1998. Again, the letter stated it had no obligation to notify the Union, nor did it state the reason for such layoff. On March 4, 1998, the Union requested that the Employer negotiate over this February 20, 1998 lay off and offered a specific date for negotiation. On May 19, 1998, Respondent, through UCCA, advised the Union that it had laid off employee Derrick Robinson on May 15, 1998. Again, the past practice reason was restated, "no reason was given for the layoff."

On March 16, 1998, Respondent, through UCCA notified the Union that it had laid off employee Mario Thalassinos on March 13, 1998. No reason was given for the layoff except the usual past practice assertion. Again, the Union requested negotiations by letter dated March 16, 1998. On March 27, 1998, Respondent sent its usual letter advising that it had laid off employees Glen Lillibridge and Richard Zeller on March 27, 1998. No reason was given for the layoff except its usual past practice statement. On March 30, 1998, the Union requested negotiations over the March 27, 1998 layoffs. By a separate letter dated March 27, 1998, the Employer advised the Union with its usual letter that it had laid off employees Robert Lock, Mike Matone, Russell Sausa, John Siano, and Phil Spannagel on March 27, 1998. No reason give for the layoff. By second letter dated March 30, 1998, the Union requested to negotiate these lay offs.

Eugene Iovine, the president of Respondent, testified at the trial. According to Iovine, there were never any negotiation with Local 363 over the decision to lay off employees. Rather, he would notify the Local 363 trust funds that an employee had been laid off.

Iovine testified generally, that in the construction industry, employees are laid off if the weather is inclement and employees are working outside. He also testified that sometimes his employees are laid off because they cannot work until another trade has completed its work. In this regard, he testified that his company is a following trade—that its work does not take place until such time as another trade such as carpenters or plumbers complete their work. Iovine testified that sometimes the Respondent performs work for the New York City Transit Authority, and sometimes if the Transit Authority does not provide it with work trains or a flagman work cannot take place as scheduled, and it is necessary to lay off employees because he could not have men hanging around paying them rates in excess of $60 per hour. At the time Respondent began laying off employees in December 1996, it was negotiating with the Union over the terms of an initial collective-bargaining agreement.

Analysis and Conclusions

It is well settled that once a majority of employees in an appropriate bargaining unit select a union to represent them, their employer is obligated to bargain with the union, and the employer, may not unilaterally alter the terms and conditions of the unit employees. See *Adair Standish Corp.,* 292 NLRB 890, 891 (1989), enfd. in relevant part 912 F 2d. 854 (6th Cir. 1990), citing *Peerless Food Products,* 236 NLRB 161 (1978). An employer violates Section 8(a)(5) of the Act when it institutes a material change in the terms and conditions of employment in an area that is a compulsory subject of collective bargaining without giving the bargaining representative both reasonable notice and an opportunity to negotiate about the proposed change. See *Porta-King Building Systems v. NLRB,* 14 F.3d 1258, 1261 (8th Cir. 1994), citing *NLRB v. Katz*, 369 US 736, 747, 82 S.Ct. 1107, 1113, 8 L.Ed. 2d 230 (1962). It is also well settled that an employer's decision to lay off employees for economic reasons is a mandatory subject of bargaining. The employer must provide notice to and bargain with the union concerning the decision to lay off bargaining unit employees before such proposed layoff takes place and the effects of that decision. *Ebenezer Rail Car Services,* 333 NLRB No. 18, slip op. at 1 (2001); *Plastonics, Inc.,* 312 NLRB 1045, 1048 (1993); *Adair Standish Corp.,* 292 NLRB 890, 891 (1989), enfd. in relevant part 912 F.2d 854 (6th Cir. 1990); and *Lapeer Foundry & Machine*, 289 NLRB 952 (1988).

In this case, Respondent simply laid off the employees, as set forth above in the facts, without offering to bargain about the layoffs before they were implemented. Respondent simply notified the Union that the layoffs had taken place without settling for any reason for such layoffs. Rather, Respondent justified each layoff with a form letter stating:

> The UECA maintains that pursuant to past practice and applicable law, it has no obligation to notify you concerning layoffs, but is doing so in order to meet possible legal obligations that may be imposed at a later date. It reserves its right to contest this notification in all future legal proceedings.

The employer's duty to bargain requires notice to the Union of an intention to layoff employees, and an offer to bargain about this decision, and not a mere notification to the union of a decision that is a fait accompli. *Lapeer Foundry*, 289 NLRB at 954. In this case, Respondent failed to notify the Union of its intention to layoff any of the employees set forth in the above, and to offer same reasonable period to bargain about its decision.

In *RBE Electronics of S.D., Inc.,* 320 NLRB 80, 81 (1995), the Board held, citing *Bottom Line Enterprises*, 302 NLRB 373 (1991), enfd. sub. nom. *Master Window Cleaning, Inc. v. NLRB*

15 F.3d 1087 (9th Cir. 1994), that where parties are engaged in negotiations for collective-bargaining agreement, an employer's obligation to refrain from unilateral changes extends beyond the mere duty of providing notice and an opportunity to bargain about a particular subject matter; rather it encompasses a duty to refrain from implementation at al, absent an overall impasse on bargaining for the agreement as a whole. In *Bottom Line*, 302 NLRB at 374, the Board recognized two limited exceptions to the general rule of a duty to refrain from implementing any changes when bargaining over the terms of a collective-bargaining agreement: (1) when a union engages in tactics designed to delay bargaining; and (2) when economic exigencies compel prompt action. Neither of these circumstances are present here.

The Union and Respondent were bargaining over the terms of an initial contract at the time the Respondent implemented these lay offs. There is no claim that the Union has engaged in tactics designed to delay bargaining. Thus, this is not a basis to justify the Employer's unilateral actions. The reasons the Employer asserts to justify its actions—that it is a following trade and it may not know until the day of a layoff that it cannot perform its work, or that when it performs work for the Transit Authority it may not have the necessary material to perform its work—do not establish any compelling economic exigencies that would excuse its failure to bargain to impasse with the Union before implementing changes in the terms and condition of unit employees' employment.

The Board recognized in *RBE Electronics*, 320 NLRB at 82, that even where the parties are involved in contract negotiations, there may be other economic exigencies, that, although not sufficient to excuse bargaining altogether, should be encompassed within the exigency situation. In those cases, the employer will satisfy its statutory obligation to not implement any changes until it has bargained the entire agreement to impasse by providing the Union with adequate notice and an opportunity to bargain over the changes it proposes to respond to the exigency and by bargaining to impasse over the particular matter. An employer must show a need that the particular action be implemented promptly and that the exigency was caused by external events, was beyond its control, or was not reasonably foreseeable. See *Pleasantville Nursing Home,* 335 NLRB 961, 962 (2001), citing *RBE Electronics*, 320 NLRB at 82.

As a defense to its action, Respondent asserts that it could implement unilateral layoffs of its employees because of its past practice of doing so with Local 363. Any past practice that Respondent had with Local 363 was extinguished when the Board subsequently certified the Charging Party as the exclusive-collective bargaining representative of the Employer's employees. The Board rejected Respondent's same argument in *Eugene Iovine, Inc*., 328 NLRB 294 (1999), enfd., 1 Fed. Appx. 8 (2d Cir. 2001). The only difference between that case and the instant case is the prior case involved working hours, while the instant case involves layoffs. I reject Respondent's defense for the same reasons set forth Eugene Iovine, Inc. supra. See also *Porta-King,* supra.

Respondent also contends that the layoffs resulted from "extraordinary events which are an unforeseen occurrence, having a major economic effect (requiring) the company to take immediate action" citing *Haskins Lumber Co.,* 316 NLRB 837 (1995), quoting *Angelica Healthcare Services,* 284 NLRB, 844, 852, 853 (1981), the Board found that Respondents log shortage (which resulted in the layoffs) had been a continuous problem for months before the layoff, and that such situation did not fall within the exception provided by *Angelica*, supra.

In the instant case, as in *Haskins*, supra, layoffs are common in the industry as Iovine credibly testified. Therefore, I find that Respondent has to give some advanced notice to the Union before taking the unilateral action of layoff and some opportunity to bargain about the layoff before implementing such layoff. How much notice and opportunity to bargain would depend on the facts surrounding each layoff. [3]

Since Respondent failed to give the Union any notice of an impending layoff, nor any opportunity to bargain over such layoffs, I conclude Respondent violated Section 8(a)(1) and (5) of the Act.

CONCLUSIONS OF LAW

1. The Respondent is, and has been at all material times, an employer engaged in commerce within the meaning of Section 2 (2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2 (5) of the Act.

3. At all times since February 23, 1993, the Union has been the exclusive collective-bargaining representative, within the meaning of Section 9(a) of the Act, in an appropriate unit of:

> All electricians, electrical maintenance mechanics, helpers, apprentices and trainees employed in the electrical field who are employed by employer-members of the United Electrical Contractors Association, a/k/a United Construction Contractors Association, but excluding all office clerical employees, guards and supervisors as defined in the Act.

4. By unilaterally laying off its unit employees during the dates set forth above, Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8 (a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. In particular, to remedy the unlawful layoffs of unit employees, I shall recommend that Respondent be ordered to make whole any unit employees for losses they suffered as a result of the unlawful unilateral layoffs with interested as computed in *New Horizons for the Retarded,* 283 NLRB 1173 (1987). The identification of the employees af-

[3] One way of satisfying Respondent's bargaining obligations might be to send the Union a letter proposing that it is Respondent's intention to layoff employees if they came to an assigned jobsite, and are informed by the general contractor that there is no work available, for whatever reason, and offer to bargain with the Union about such proposal.

fected and the precise amounts owed to them be left for determination at the compliance phase of this proceeding.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[4]

ORDER

The Respondent, Eugene Iovine, Inc., Farmingdale, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Unilaterally laying off its unit employees represented by Local Union No. 3, International Brotherhood of Electrical Workers, AFL–CIO without affording the Union notice and an opportunity to bargain.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Before implementing any layoff of its unit employees notify and, on request, bargain with Local Union No. 3, International Brotherhood of Electrical Workers, AFL–CIO as the exclusive collective-bargaining representative of employees in the following bargaining unit:

> All electricians, electrical maintenance mechanics, helpers, apprentices and trainees employed in the electrical field who are employed by employer-members of the United Electrical Contractors Association, a/k/a United Construction Contractors Association, but excluding all office clerical employees, guards and supervisors as defined in the Act.

(b) Make unit employees whole for any loss of earnings and other benefits suffered as a result of the unilateral layoffs of its unit employees which occurred on various dates between December 6, 1996, and March 27, 1998, in the manner set forth in the remedy section of the decision.

(c) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its Farmingdale, New York, copies of the attached notice marked "Appendix."[5] Copies of the notice, on forms provided the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its - own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 6, 1996.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT unilaterally layoff our unit employees represented by Local Union No. 3, International Brotherhood of Electrical Workers, AFL–CIO without affording the Union notice and an opportunity to bargain.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in exercising their rights guaranteed them by Section 7 of the Act.

WE WILL before implementing any layoff of our unit employees notify and, on request, bargain with Local Union No. 3, International Brotherhood of Electrical Workers, AFL–CIO as the exclusive collective-bargaining representative of employees in the following bargaining unit:

> All electricians, electrical maintenance mechanics, helpers, apprentices and trainees employed in the electrical field who are employed by employer-members of the United Electrical Contractors Association, a/k/a United Construction Contractors Association, but excluding all office clerical employees, guards and supervisors as defined in the Act.

[4] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[5] If this Order is enforced by a judgment of the United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of The National Labor Relations Board."

WE WILL make unit employees whole for any loss of earnings and other benefits suffered as a result of the unilateral layoffs of our unit employees which occurred on various dates between December 6, 1996, and March 27, 1998, in the manner set forth in the remedy section of the decision.

EUGENE IOVINE, INC.